

Internal Revenue Service

Department of the Treasury
Washington, DC 20224

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Person To Contact:

, ID No.

Telephone Number:

Refer Reply To:

CC:CORP:04

PLR-117132-13

Date:

October 18, 2013

Legend

Distributing =

State A =

Date 1 =

Date 2 =

Shareholder A =

Shareholder B =

Business A =

Business B =

Business C =

Dear _____ :

We respond to your March 22, 2013 request for rulings regarding certain federal income tax consequences of a proposed transaction. The information submitted in that request, and in subsequent correspondence, is summarized below.

The rulings contained in this letter are based on facts and representations submitted by the taxpayer and accompanied by a penalty of perjury statement executed by the appropriate parties.

This office has not verified any of the materials submitted in support of the request for rulings. Verification of the information, representations, and other data may be required as part of the audit process. In particular, this office has not reviewed any information pertaining to, and has made no determination regarding, whether the proposed transaction: (i) satisfies the business purpose requirement of Treas. Reg. § 1.355-2(b); (ii) is used principally as a device for the distribution of the earnings and profits of the distributing corporation or the controlled corporation (see § 355(a)(1)(B) of the Internal Revenue Code (the "Code") and § 1.355-2(d)); or (iii) is part of a plan (or series of related transactions) pursuant to which one or more persons will acquire directly or indirectly stock representing a 50-percent or greater interest in the distributing corporation or the controlled corporation (see § 355(e) and § 1.355-7).

Summary of Facts

Distributing is a State A S corporation that was incorporated on Date 1. Distributing is directly and indirectly engaged in Business A, and indirectly in Business B, and Business C through several qualified Subchapter S corporations.

Shareholder A owns 50 percent of the Distributing common stock and Shareholder B owns the remaining Distributing shares. Shareholder A and Shareholder B have had differences with respect to the operation of Distributing and wish to go their separate way.

Proposed Transaction

In order to resolve these disputes, Distributing has proposed the following transaction (the "Proposed Transaction"):

- (i) Distributing will form Controlled and will transfer the stock of several corporations engaged in Business A, and the stock of the entities engaged in Business B and

Business C to Controlled in exchange for Controlled stock and the assumption by Controlled of the liabilities associated with those assets (the "Contribution").

- (ii) Distributing will distribute the Controlled stock to Shareholder B in exchange for his Distributing stock (the "Distribution").
- (iii) Controlled will make an election under § 1362(a) to be treated as an S corporation (within the meaning of § 1361(a)), to be effective on the date of the Distribution.

Representations

The following representations have been made with respect to the Proposed Transaction:

- (a) Distributing, Controlled, Shareholder A, and Shareholder B will each pay their own expenses, if any, incurred in connection with the Proposed Transaction.
- (b) Any indebtedness owed by Controlled to Distributing after the Distribution will not constitute stock or securities.
- (c) The fair market of the Controlled stock to be received by Shareholder B will be approximately equal to the fair market value of the Distributing stock surrendered.
- (d) No part of the consideration to be distributed by Distributing will be received by a shareholder as a creditor, employee, or in any capacity other than that of a shareholder of Distributing.
- (e) The five years of financial information submitted on behalf of Business A, Business B, and Business C is representative of its present business operations and with regard to such business, there have been no substantial operational changes since the date of the last financial statements submitted.
- (f) Following the Proposed Transaction, Distributing will continue the active conduct of Business A, and Controlled will continue the active conduct of Business A, Business B, and Business C independently with their separate employees.
- (g) The Distribution will be carried out to resolve differences of opinion regarding how to operate Business A, Business B, and Business C. The Distribution is motivated, in whole or substantial part, by the corporate business purpose.
- (h) The Distribution is not used principally as a device for the distribution of the earnings and profits of Distributing or Controlled, or both.
- (i) The total adjusted basis and the fair market value of the assets to be transferred to Controlled by Distributing each will equal or exceed the sum of the liabilities to be

assumed (within the meaning of § 357(d)) by Controlled plus any liabilities to which the assets to be transferred are subject.

(j) The liabilities to be assumed (within the meaning of § 357(d)) by Controlled in the transaction, if any, and the liabilities to which the transferred assets are subject, if any, were incurred in the ordinary course of business and are associated with the assets being transferred.

(k) The fair market value of the Controlled assets will exceed the amount of the liabilities of Controlled immediately after the exchange.

(l) Payments made in connection with all continuing transactions, if any, between Distributing and Controlled, will be for fair market value based on terms and conditions arrived at by the parties bargaining at arm's length.

(m) No two parties to the transaction are investment companies as defined in § 368(a)(2)(F)(iii) and (iv).

(n) For purposes of § 355(d), immediately after the Distribution, no person (determined after applying § 355(d)(7)) will hold stock possessing 50-percent or more of the total combined voting power of all classes of Distributing stock entitled to vote, or 50-percent or more of the total value of shares of all classes of Distributing stock, that was acquired by purchase (as defined in § 355(d)(5) and (8)) during the five-year period (determined after applying § 355(d)(6)) ending on the date of the Distribution.

(o) For purposes of § 355(d), immediately after the Distribution, no person (determined after applying § 355(d)(7)) will hold stock possessing 50-percent or more of the total combined voting power of all classes of Controlled stock entitled to vote, or 50-percent or more of the total value of shares of all classes of Controlled stock, that was either (i) acquired by purchase (as defined in § 355(d)(5) and (8)) during the five-year period (determined after applying § 355(d)(6)) ending on the date of the Distribution or (ii) attributable to distributions on Distributing stock or securities that were acquired by purchase (as defined in § 355(d)(5) and (8)) during the five-year period (determined after applying § 355(d)(6)) ending on the date of the Distribution.

(p) The Distribution is not part of a plan or series of related transactions (within the meaning of § 1.355-7) pursuant to which one or more persons will acquire directly or indirectly stock representing a 50-percent or greater interest (within the meaning of § 355(d)(4)) in Distributing or Controlled (including any predecessor or successor of any such corporation).

(q) Immediately after the Distribution, neither Distributing nor Controlled will be a disqualified investment corporation (within the meaning of § 355(g)(2)).

(r) Effective Date 2, Distributing made an election under § 1362(a) to be an S corporation (within the meaning of § 1361(a)), and Distributing continued to be an S corporation since Date 2.

(s) Immediately after the Distribution, Controlled will be eligible to elect S corporation status pursuant to § 1362(a), effective immediately after the Distribution.

(t) Controlled will elect to be an S corporation pursuant to § 1362(a) on the first available date after their formation, and there is no plan or intent to revoke or otherwise terminate the S corporation election of either Distributing or Controlled.

Rulings

Based solely on the information submitted and the representations made, we rule as follows:

(1) The Contribution, together with the Distribution, will qualify as a reorganization within the meaning of § 368(a)(1)(D). Distributing and Controlled each will be "a party to a reorganization" within the meaning of § 368(b).

(2) No gain or loss will be recognized by Distributing on the Contribution (§§ 361(a) and 357(a)).

(3) No gain or loss will be recognized by Controlled on the Contribution (§ 1032(a)).

(4) Controlled's basis in each asset received from Distributing will equal the basis of such asset in the hands of Distributing immediately prior to its transfer (§ 362(b)).

(5) The holding period for each asset received by Controlled from Distributing will include the period during which such asset was held by Distributing (§ 1223(2)).

(6) No gain or loss will be recognized by Distributing on the Distribution (§ 361(c)(1)).

(7) No gain or loss will be recognized to (and no amount will be included in the income of) Shareholder B on receipt of Controlled stock in the Distribution (§ 355(a)(1)).

(8) The basis of the Controlled stock in the hands of Shareholder B will be the same as the basis of the Distributing stock surrendered by Shareholder B (§ 358(a)).

(9) Shareholder B's holding period of the Controlled stock received in the Distribution will include the holding period of the Distributing stock with respect to which the Distribution will be made, provided that the Distributing stock is held as a capital asset on the day of the Distribution (§ 1223(1)).

(10) Distributing's earnings and profits will be allocated between Distributing and Controlled in accordance with § 312(h) and § 1.312-10(a).

(11) The accumulated adjustments account of Distributing will be allocated between Distributing and Controlled in a manner similar to the manner in which the earnings and profits of Distributing will be allocated under § 312(h) (see § 1.312-10(a) and § 1.1368-2(d)(3)).

(12) Provided that the Distribution is undertaken immediately after the Contribution, Distributing's momentary ownership of the stock in Controlled, as part of the reorganization under § 368(a)(1)(D), will not cause Controlled to have an ineligible shareholder for any portion of their respective first taxable year under § 1361(b)(1)(B) and will not, in itself, render Controlled ineligible to elect to be an S corporation for its first taxable year.

(13) Provided that the Distribution is undertaken immediately after the Contribution, Controlled's ownership of the stock of its subsidiary corporations, as part of the reorganization under § 368(a)(1)(D), will not cause Distributing's subsidiaries to be ineligible to be qualified subchapter S subsidiaries for any portion of Controlled's first taxable year and will not, in itself, render Controlled ineligible to elect to be an S corporation for its first taxable year.

Caveats

We express no opinion about the tax treatment of the Proposed Transaction under other provisions of the Code and regulations or the tax treatment of any conditions existing at the time of, or effects resulting from, the Proposed Transaction that is not specifically covered by the above rulings. In particular, we express no opinion regarding whether the Proposed Transaction: (i) satisfies the business purpose requirement of § 1.355-2(b); (ii) is used principally as a device for the distribution of the earnings and profits of the distributing corporation or the controlled corporations or both (see § 355(a)(1)(B) and § 1.355-2(d)); or (iii) is part of a plan (or series of related transactions) pursuant to which one or more persons will acquire directly or indirectly stock representing a 50-percent or greater interest in the distributing corporation or the controlled corporations (see § 355(e) and § 1.355-7).

Procedural Statements

This ruling letter is directed only to the taxpayer who requested it. Section 6110(k)(3) provides that it may not be used or cited as precedent.

A copy of this ruling letter must be attached to any income tax return to which it is relevant. Alternatively, taxpayers filing their returns electronically may satisfy this

requirement by attaching a statement to their return that provides the date and control number of this ruling letter.

In accordance with a power of attorney on file in this office, a copy of this ruling letter is being sent to your authorized representative.

Sincerely,

Richard K. Passales
Senior Counsel, Branch 4
Office of the Associate Chief Counsel
(Corporate)